

The enterprise zone exemption allows retailers located in the municipality or unincorporated area of a county that has established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a GIL).

May 24, 1999

Dear Sir/Madam:

This letter is in response to your inquiry received May 7, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

We are not sure what your specific question is. However, since you enclosed copies of a "Certification of Eligibility for Sales Tax Exemption," and a "Purchaser's Statement," we assume that you have concerns regarding the proper way to claim the enterprise zone building materials exemption from sales tax. Section 5k of the Retailers' Occupation Tax Act (35 ILCS 120/5k) provides that "[e]ach retailer whose place of business is within a county or municipality which has established an Enterprise Zone pursuant to the 'Illinois Enterprise Zone Act' and who makes a sale of building materials to be incorporated into real estate in such enterprise zone by remodeling, rehabilitation or new construction, may deduct receipts from such sales when calculating the tax imposed by this Act. The deduction allowed by this Section for the sale of building materials may be limited to the extent authorized by ordinance, adopted after the effective date of this amendatory Act of 1992, by the municipality or county that created the enterprise zone."

Please find enclosed a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. Generally, the enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that has established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. In order for the enterprise zone building materials exemption to be properly claimed, it must be shown that qualifying building materials were purchased from a retailer located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. Please note that the extent of the exemption may be limited by local ordinance. Questions regarding local limitations may be resolved by reviewing the ordinance or consulting the local Zone Administrator. When persons purchase building materials from suppliers outside the enterprise zone, the exemption does not apply and such purchases are subject to State and applicable local taxes.

Section 130.1951(a)(2) sets forth criteria for establishing that the retailer of the building materials is properly located in the municipality or unincorporated area of the county which has established the enterprise zone at the time of sale. Section 130.1951(a)(3) explains how to establish that the purchaser purchased qualifying building materials from a qualified retailer.

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Section 130.1951(a)(6) describes the documentation that a retailer claiming the exemption must obtain from its purchaser and keep in its books and records to support the exemption. Specifically, the purchaser's statement must contain the following information: a) a certification by the purchaser that the building materials being purchased are being purchased for incorporation into real estate located in an enterprise zone; b) a description of the building materials being purchased (this may be done by a cross reference to the retailers' invoice number); c) the location of the real estate into which the building materials will be incorporated (this may be done by reference to the street address of the real estate); d) the name of the enterprise zone in which that real estate is located (and the retailer must insure that he is located within the municipality or in an unincorporated area of the county which established the enterprise zone named in the purchaser's statement); and e) the purchaser's signature and date of signing.

Please note that under Illinois law, construction contractors are considered the end users of the tangible personal property that they take off the market and permanently affix to real estate. See the enclosed copy of 86 Ill. Adm. Code 130.2075. As a result, they owe Use Tax on the cost price of those materials. They cannot act as retailers to themselves (by removing stock from their inventory) and claim the enterprise zone exemption. To qualify for the exemption, they must instead purchase qualifying materials from retailers located inside the jurisdiction that created the enterprise zone into which those materials will be incorporated.

Qualifying materials under the exemption include those that will be incorporated into real estate located in an enterprise zone by remodeling, rehabilitation, or new construction. In general, built-in appliances that are physically incorporated into real estate can qualify for the exemption. See Section 130.1951(a)(4)(G).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.